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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,311	07/24/2003	Christine Buckley	BUCK-1001US	1950

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EXAMINER

MUROMOTO JR, ROBERT H

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,311

Applicant(s)

BUCKLEY, CHRISTINE

Examiner

Robert H Muromoto, Jr.

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-13, 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Patterson US patent 1,846,751.

Patterson '751 discloses terry woven fabric goods such as "towels, bath mats, and wash cloths." The examiner considers a terry woven fabric, which can be used as a bath mat to also be inherently capable of functioning as a "woven exercise rug". The general definition of rug being "a piece of thick heavy fabric that usually has a nap or pile and is used as a floor covering (From Merriam-Webster dictionary)."

Looking to figures 1 and 2, the woven fabric shows a central portion 1 which is smooth, and an upper portion directly above central portion 1 and a lower portion directly below central portion 1. In both of these areas there are variations in the pile height at 6 (flat portions) and 2, 3, 4 (contoured portions). These variations would cause an increase of frictional (traction) properties of the contoured areas in relation to the central portion 1 of the fabric as recited in claim 1.

It is plainly shown in figure 1, that the area of the central portion 1 is greater than the area of the upper or lower contoured portions as recited in claim 3.

The contour portions of Patterson correspond to the "ridges" of claim 5 and are oriented perpendicularly as recited.

Art Unit: 3765

The contours of Patterson are spaced apart at regular intervals except for the spacing between areas 6, 4, and 5 respectively. Figure 2 shows that the width of 6 is larger than 5, as well as the width of 4 being larger than 3.

The limitations of claims 9 and 10 are inherent to any pile fabric as the surface effect of the fabric is caused by yarns that are "supplementary" and not integral to the ground fabric structure. This can be seen in figure 3 of Patterson, where reference numeral 4 shows the pile weft and the ground fabric structure (which is not given a reference numeral).

The contours of Patterson are "uniformly" spaced across the upper and lower portions of the terry fabric as recited in claims 17 and 18. These spacing does change for the contours as cited above but the change in spacing is used on the upper and lower portions and is therefore "uniformly" spaced, as the examiner is applying "uniformly" in the broadest reasonable terms.

The contoured portions of Patterson are also considered to be "bumps" in the broadest reasonable terms, as recited in claim 19.

The terry fabric of Patterson is rectangular in shape as seen in figure 1, as recited by claim 20.

The added limitation that the largest diameter of the contours is perpendicular to the plane of the rug is also inherent to Patterson. The contoured portions of Patterson are caused by pile yarns of the fabric. Each pile yarn is generally perpendicular to the main plane of the rug and the largest dimension (longitudinal length of the pile yarn) runs in the same perpendicular direction.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson '751.

Although Patterson teaches essentially all of the limitations of the instant invention, Patterson does not explicitly show that the area of the central portion is larger than the combined area of the upper and lower contoured portions of the rug as recited in claim 4.

However, with respect to the limitation, the specification contains no disclosure of either the critical nature of the claimed limitations or any unexpected results arising therefrom, and that as such the limitations were arbitrary and therefore obvious. Such unsupported limitations cannot be a basis for patentability, since where patentability is said to be based upon particular dimensions or another variable in the claim, the applicant must show that the chosen variables are critical. *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal area of the central portion versus the upper and lower contoured portions for a particular application.

Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson '751 in view of Kobe et al., US patent 6,372,323.

Although Patterson teaches essentially all of the limitations of the claimed invention, Patterson does not teach the contours being formed by the attachment of a separate layer of material, attached to the upper and lower portions.

The predetermined spacing arrangement was previously taught in Patterson as cited above.

Kobe '323 teaches a slip control article, which is composed of a plurality of backing layers and upstanding stems that give the frictional properties of the article. The backing layer, which can be formed of multiple sub-layers, is sufficiently thick to bond a reinforcing web during extrusion, such as a sheet of fabric (woven or non-woven), to impart increased tear resistance and tensile strength. The slip control article also includes primarily upstanding stems 26 which are integrally formed with at most one of the many layers of the backing and then adhesively attached to the backing layers. The upstanding stems 26 are arranged in a regular or irregular array. Various patterns of stems may be used.

Therefore it would have been obvious to combine the teachings of Kobe with those of Patterson to attach a separate layer of upstanding stems (contours) to the fabric in a regular or irregular array of stems (contours) to provide a material with increased frictional properties.

Response to Arguments

Applicant's arguments filed 9/1/2004 have been fully considered but they are not persuasive. Applicant has attempted to overcome the cited Patterson reference by adding a limitation that the contours have their largest dimension is perpendicular to the

Art Unit: 3765

main plane of the woven rug or mat. The pile fabric of Patterson inherently discloses this limitation. The contoured portions of Patterson are caused by a plurality of pile yarns. The examiner equates the pile yarns to the recited "contours". A pile yarn's largest diameter runs in the longitudinal direction of the pile yarn. The pile yarns run generally perpendicular to the main plane of the fabric shown by Patterson, as recited by the instant invention. Since this is the only argument presented by the applicant, the previous rejection remains and is considered to be proper.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Art Unit: 3765

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert H Muromoto, Jr. whose telephone number is 703-306-5503. The examiner can normally be reached on 8-530, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bhm
November 22, 2004


JOHN CALVERT
SUPERVISORY PATENT EXAMINER
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